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INCORPORATED

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

JEFFREY POOLE, WINSOME P.  
CARTER, JAMES C. HOWELL,  
JEFFREY KEMP, ANDREA LOUGHLIN,  
HENRY V. M. MULTALA, ANTHONY  
PALUMBO, MARY O'REILLY,  
BURKHARD SPRING, DAVID  
BACHRACH, PETER R. GARRISON,  
ROBERT TRAITZ, EDWARD FRANCE,  
EDWARD C. REINHART, MICHAEL  
WENDLING and RICHARD J. TESTA,  
JR., on behalf of themselves, the general  
public, and all others similarly situated,

Plaintiff,

v.

DOCKET NO. 3:06-cv-01657-HA

**JOINT STIPULATION OF SETTLEMENT  
OF CLASS ACTION AND RELEASE;**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL (EXHIBIT 1)**

**[PROPOSED] ORDER RE: SETTLEMENT  
FORMULA FOR ALLOCATION AND  
APPROVING MAILING OF CLASS  
NOTICE AND SETTING SETTLEMENT  
HEARING (EXHIBIT 2);**

1 MERRILL LYNCH, PIERCE, FENNER &  
2 SMITH, INCORPORATED, a corporation,  
3 Defendant.

**[PROPOSED] NOTICE TO CLASS  
MEMBERS (EXHIBIT 3);**

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL OF SETTLEMENT  
(EXHIBIT 4); AND**

**[PROPOSED] JUDGMENT (EXHIBIT 5)**

This Joint Stipulation of Settlement of Class Action and Release ("Agreement" or "Settlement") is entered into between Plaintiffs David Bachrach ("Bachrach"), Edward France ("France"), Peter Garrison ("Garrison"), James C. Howell ("Howell"), Burkhard Spring ("Spring"), Henry V.M. Multala ("Multala"), Winsome P. Carter ("Carter"), Andrea Loughlin ("Loughlin"), Jeffrey Kemp ("Kemp"), Anthony Palumbo ("Palumbo"), Mary O'Reilly ("O'Reilly"), Jeffrey Poole ("Poole"), Edward C. Reinhart ("Reinhart"), Robert Traitz ("Traitz"), Richard J. Testa, Jr. ("Testa") and Michael Wendling ("Wendling") (collectively, "the Settling Named Plaintiffs" or "Class Representatives."), individually and as class representatives on behalf of the settlement class defined in Section V, Paragraph 1.2 of this Agreement, on the one hand, and Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), on the other hand. The settlement class and Merrill Lynch will be referred to collectively as the "Settling Parties."

IT IS HEREBY STIPULATED AND AGREED by and between the Settling Parties as set forth below:

I. Recitals And The Nature Of The Litigation.

A. Merrill Lynch is a full-service securities firm with offices located throughout the United States and with its principal place of business in New York, New York.

B. Jeffrey Poole was employed by Merrill Lynch as a Financial Advisor in the State of Oregon and is the named Plaintiff in an action pending in the United States District Court for the District of Oregon entitled Jeffrey Poole v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Case No. CV-06-1657 (the "Poole Action"). Generally, the Poole Action alleges that Financial Advisors (as defined in Section V, ¶ 1.10 herein) employed anywhere in the United States (but excluding California) are owed overtime pay, as well as related damages, penalties, liquidated damages and interest because Merrill Lynch allegedly misclassified those individuals as "exempt" employees in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. ("FLSA") and Oregon law. In addition, the Poole Action alleges that Merrill Lynch made improper deductions from its Oregon Financial Advisors' wages and/or failed, under

1 Oregon law, to reimburse its Oregon Financial Advisors for various expenses they incurred in the  
2 course of their jobs, including, without limitation, deductions for losses due to trading errors,  
3 advertising and promotional expenses, wages paid to their support staff and other allegedly  
4 business-related expenses which were incurred by Oregon Financial Advisors but not reimbursed  
5 by Merrill Lynch.

6 C. Bachrach, France, Garrison, Howell, Spring, Multala, Carter, Loughlin, Kemp,  
7 Palumbo, O'Reilly, Reinhart, Traitz, Testa, and Wendling were also employed by Merrill Lynch  
8 as Financial Advisors in the United States but outside of California. These Plaintiffs are currently  
9 prosecuting the following actions against Merrill Lynch (collectively the "Other Pending  
10 Actions"), all of which allege claims on behalf of certain groups of Financial Advisors employed  
11 by Merrill Lynch which are substantially similar to, and in some cases overlap with, each other  
12 and the allegations and claims asserted in the Poole Action.

13 1. David Bachrach v. Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
14 U.S. District Court, District of New Jersey, Case No. 06-CV-02786;

15 2. Edward France v. Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
16 U.S. District Court, Eastern District of Pennsylvania, Case No. 2:06-CV-00782.

17 3. Peter Garrison v. Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce,  
18 Fenner & Smith Incorporated, U.S. District Court, District of New Jersey, Case No. 06-CV-  
19 03553.

20 4. James Howell, Burkhard Spring, Henry Multala and Winsome Carter v.  
21 Merrill Lynch, Pierce, Fenner & Smith Incorporated, U.S. District Court, Eastern District of New  
22 York, Case No. CV-06-04872.

23 5. Andrea Loughlin and Jeffrey Kemp v. Merrill Lynch, Pierce, Fenner &  
24 Smith Incorporated, U.S. District Court, Eastern District of New York, Case No. 06-CV-02835.

25 6. Anthony Palumbo and Mary O'Reilly v. Merrill Lynch, Pierce, Fenner &  
26 Smith Incorporated, U.S. District Court, Eastern District of New York, Case No. 06-CV-02104.

27 7. Richard J. Testa, Jr. v. Merrill Lynch, Pierce, Fenner & Smith  
28 Incorporated, U.S. District Court, Southern District of New York, Case No. 07-CV-8320.

1                   8.     Edward Reinhart v. Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
2 U.S. District Court, Eastern District of Washington, Case No. CV-06-3038.

3                   9.     Robert Traitz v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, U.S.  
4 District Court, District of New Jersey, Case No. 06-CV-03788.

5                   10.    Michael Wendling v. Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
6 U.S. District Court, Eastern District of Texas, Case No. 06-CV-458.

7           D.     Solely for the purpose of effectuating this Settlement, the Settling Named  
8 Plaintiffs have jointly filed a consolidated amended complaint in the Poole Action (the  
9 “Consolidated Action”). The Consolidated Action and the Other Pending Actions shall be  
10 referred to collectively as the “Litigation.” Generally, the Consolidated Action alleges that  
11 individuals who were employed by Merrill Lynch as Financial Advisors in the United States (but  
12 excluding California), Washington D.C., and Puerto Rico are entitled to overtime pay, as well as  
13 related damages, penalties, liquidated damages, and interest, because Merrill Lynch misclassified  
14 those individuals as “exempt” employees, in violation of the FLSA as well as applicable state  
15 law. In addition, the Consolidated Action alleges that, under applicable state law, Merrill Lynch  
16 is required to reimburse its Financial Advisors for certain deductions from wages they incurred in  
17 the course of their jobs, including without limitation, deductions for losses due to trading errors,  
18 advertising and promotional expenses, wages paid to their support staff and other business-related  
19 expenses which were incurred by Financial Advisors but not reimbursed by Merrill Lynch.

20           E.     In connection with the filing of the various above-described actions, Merrill Lynch  
21 investigated and reviewed its policies concerning the various matters at issue. Through this  
22 Agreement, Merrill Lynch in no way concedes liability or wrongdoing with regard to any of the  
23 claims alleged. To the contrary, Merrill Lynch contends that it has properly classified its  
24 Financial Advisor positions and properly complied with applicable federal and state wage and  
25 hour laws. Moreover, should the Litigation continue, Merrill Lynch believes that the various  
26 actions are not suitable for class and/or collective treatment.

27                   Following its investigation and review, Merrill Lynch served initial disclosures  
28 and discovery responses pursuant to the Federal Rules of Civil Procedure in one or more of the

1 Other Pending Actions. Merrill Lynch also provided responses to information requests from  
2 various Class Counsel, including its compensation plans and other relevant policies in question.  
3 Through counsel experienced in these types of cases, the parties then began a series of arms-  
4 length negotiations that led to the scheduling of a mediation with professional mediator Mark  
5 Rudy, Esq. Prior to the mediation, Merrill Lynch responded to additional requests for  
6 information and data from various Class Counsel concerning Merrill Lynch policies and  
7 practices. Merrill Lynch also provided information and data to various Class Counsel concerning  
8 putative class members. On November 18, 2006, the Settling Parties (except for Testa and  
9 Wendling) participated in a mediation in San Francisco, California with Mr. Rudy, and they  
10 reached a tentative agreement. The Settling Parties then continued to negotiate over the next  
11 fifteen (15) months to reach the conditional agreement reflected herein.

12 F. The Settling Named Plaintiffs and Class Counsel are sufficiently familiar with the  
13 facts of this case and the applicable federal and state laws to make an informed judgment as to the  
14 fairness of the Agreement. Based on their evaluation, the Settling Named Plaintiffs and Class  
15 Counsel have concluded that the Agreement is fair, reasonable, and in the best interests of the  
16 class members and respectfully request that the Agreement be approved by the Court.

17 II. The Conditional Nature of This Agreement.

18 A. This Agreement and all associated exhibits or attachments are made for the sole  
19 purpose of attempting to consummate settlement of this action on a class-wide basis. This  
20 Agreement and the settlement it evidences is made in compromise of disputed claims. Because  
21 the Consolidated Action was pled as a class and collective action, this settlement must receive  
22 preliminary and final approval by the Court. Accordingly, Merrill Lynch and Class Counsel enter  
23 into this Agreement and associated settlement on a conditional basis. In the event that the Court  
24 does not execute and file the Order Granting Final Approval of Settlement, or in the event that the  
25 associated Judgment does not become Final for any reason, this Agreement shall be deemed null  
26 and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized  
27 for any purpose whatsoever, and the negotiation, terms and entry of the Agreement shall remain  
28

1 subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar  
2 nature, and the mediation privilege.

3 B. Class Counsel agree to dismiss with prejudice the cases comprising the Other  
4 Pending Litigation by no later than five (5) court days following the Effective Date of this  
5 Agreement. The full effectiveness of this Agreement is conditioned upon the dismissal with  
6 prejudice of each of the cases comprising the Other Pending Litigation. If any one of these cases  
7 has not been dismissed with prejudice as provided in this Paragraph, Merrill Lynch shall have the  
8 option in its sole discretion to (a) rescind this settlement and not make any payments pursuant to  
9 this Agreement at all; or (b) not make any payments under this Agreement to the specific named  
10 Plaintiffs and/or Plaintiffs' counsel responsible for the case(s) not dismissed, and the payments  
11 not made to such counsel shall remain property of Merrill Lynch and not be redistributed to other  
12 counsel; or (c) proceed with the settlement. Settlement of this action is also conditioned on the  
13 dismissal with prejudice of any and all actions, even those not commenced by Class Counsel in  
14 the Litigation, asserting claims similar to those presented in the Litigation and pending as of the  
15 date of the Preliminary Approval Date. If this condition is not satisfied, Merrill Lynch shall have  
16 the option in its sole discretion to rescind this Agreement and not make any settlement payments  
17 at all. Individual FLSA claims (as distinguished from collective FLSA actions) not released by  
18 actions taken in connection with the Agreement are not affected by the provisions of this  
19 Paragraph.

20 C. Merrill Lynch denies all of the claims as to liability, damages, penalties, interest,  
21 fees, restitution and all other forms of relief as well as the class allegations asserted in the  
22 Litigation. Merrill Lynch has agreed to resolve the Litigation via this Agreement, but to the  
23 extent this Agreement is deemed void or the Effective Date does not occur, Merrill Lynch does  
24 not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in  
25 the Litigation upon all procedural and factual grounds, including without limitation the ability to  
26 challenge class and/or collective action treatment on any grounds and/or to assert any and all  
27 defenses or privileges. The Class Representatives and all Class Counsel agree that Merrill Lynch  
28 retains and reserves these rights, and agree not to take a position to the contrary; specifically, the



1 Class Representatives and Class Counsel agree not to argue or present any argument, and hereby  
2 waive any argument, that Merrill Lynch could not contest class certification and/or proceeding  
3 collectively on any grounds if the Litigation were to proceed or that this agreement is evidence of  
4 or constitutes an admission that class certification or a collective action may be appropriate.  
5 Similarly, Merrill Lynch agrees not to claim delay or laches against Class Representatives and  
6 Class Counsel regarding, without limitation, Class Certification. This Agreement and the  
7 negotiations leading thereto shall not be admissible or referenced in any fashion in the Litigation  
8 if the settlement does not become Final including, but not limited to, in any motion practice on  
9 class certification or the appropriateness of proceeding as a collective action.

10 III. Defendant's Denial of Wrongdoing or Liability.

11 Merrill Lynch and the Merrill Lynch Releasees deny all of the claims and  
12 contentions alleged by the Class Representatives in the Litigation. Nonetheless, Merrill Lynch  
13 has concluded that further conduct of the Litigation would be protracted and expensive and that it  
14 is desirable that the Litigation be fully and finally settled in the manner and upon the terms and  
15 conditions set forth in this Agreement. Merrill Lynch has also taken into account the uncertainty  
16 and risks inherent in any litigation, especially in multi-party cases like the Litigation. Merrill  
17 Lynch has therefore determined that it is desirable and beneficial to it that the Litigation be settled  
18 in the manner and upon the terms and conditions set forth in this Agreement.

19 IV. Claims of The Class Representatives and Benefits of Settlement.

20 The Class Representatives and Class Counsel believe that the claims asserted in  
21 the Litigation have merit. The Class Representatives and Class Counsel, however, recognize and  
22 acknowledge the expense and length of the type of continued proceedings necessary to prosecute  
23 the Litigation against Merrill Lynch through trial and through appeals. The Class Representatives  
24 and Class Counsel have also taken into account the uncertain outcome and the risk of any  
25 litigation, especially in multi-party actions such as this Litigation, as well as the difficulties and  
26 delays inherent in such litigation. Based upon their evaluation, the Class Representatives and  
27 Class Counsel have determined that the settlement set forth in the Agreement is in the best  
28 interests of the Class Representatives and the Settlement Class.



V. Terms of The Agreement of Settlement.

NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the Class Representatives (for themselves and the Settlement Class Members) and Merrill Lynch, with the assistance of their respective counsel or attorneys of record, that, as among the Settling Parties, including all Settlement Class Members, the Litigation and the Released Claims shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Agreement and the Judgment.

1. Definitions.

As used in all parts of this Agreement, the following terms have the meanings specified below:

1.1 "Claims Administrator" means the third-party claims administration firm of Rust Consulting, Inc.

1.2 "Class" means the collective group of those individuals who were employed by Merrill Lynch in the positions of Financial Advisor (sometimes referred to previously as "Financial Consultants") (including those who perform the duties of a Financial Advisor simultaneously with a supervisory role), Professional Development Program ("PDP") Financial Advisors, Paths of Achievement ("POA") Financial Advisors and/or Financial Advisor Trainees employed in the United States (but excluding California), Washington, D.C. and Puerto Rico during the Class Period. Accordingly, the Class does not include any Persons who were not employed by Merrill Lynch in these identified positions in these identified jurisdictions during the Class Period. It is understood and agreed by the Settling Parties that this Class consists of approximately 21,000 or more Persons.

1.3 "Class Counsel" means, collectively, all of the counsel representing the Settling Named Plaintiffs in the Litigation.

1.4 "Class Member" or "Member of the Class" means a Person who is a member of the Class.

1                   1.5       “Class Period” means the following applicable periods: (a) with respect  
2 to Financial Advisors who worked in any portion of the United States (but excluding California),  
3 Washington, D.C., and Puerto Rico other than the States of Massachusetts, New York, New  
4 Jersey, Oregon, Pennsylvania, Texas and Washington (except those Persons, if any, who have  
5 already opted into collective action lawsuits in the Other Pending Actions and for whom special  
6 provisions will account for their arguably longer claim periods), the period that runs from the date  
7 which is three years prior to the date on which preliminary approval is given for the settlement in  
8 the Consolidated Action to the date on which preliminary approval is given for the settlement in  
9 the Consolidated Action; (b) with respect to Financial Advisors who worked in Massachusetts,  
10 and only for those work months they worked in Massachusetts, September, 24, 2001, through the  
11 date on which preliminary approval is given for the settlement in the Consolidated Action;  
12 (c) with respect to Financial Advisors who worked in New York, and for only those work months  
13 they worked in New York, May 5, 2000, through the date on which preliminary approval is given  
14 for the settlement in the Consolidated Action; (d) with respect to Financial Advisors who worked  
15 in New Jersey, and for only those work months they worked in New Jersey, June 20, 2000,  
16 through the date on which preliminary approval is given for the settlement in the Consolidated  
17 Action; (e) with respect to Financial Advisors who worked in Oregon, and for only those work  
18 months they worked in Oregon, November 16, 2003, through the date on which preliminary  
19 approval is given for the settlement in the Consolidated Action; (f) with respect to Financial  
20 Advisors who worked in Pennsylvania, and for only those work months they worked in  
21 Pennsylvania, February 22, 2003, through the date on which preliminary approval is given for the  
22 settlement in the Consolidated Action; (g) with respect to Financial Advisors who worked in  
23 Texas, and only for those work months they worked in Texas, October 26, 2002, through the date  
24 on which preliminary approval is given for the settlement in the Consolidated Action; and  
25 (h) with respect to Financial Advisors who worked in Washington, and for only those work  
26 months they worked in Washington, May 9, 2003, through the date on which preliminary  
27 approval is given for the settlement in the Consolidated Action.

1                   1.6       “Class Representatives” or “The Class Representatives” means the  
2       Settling Named Plaintiffs in the Litigation identified in the first paragraph of this Agreement.

3                   1.7       “Court” means the United States District Court for the District of Oregon.

4                   1.8       “Effective Date” means the date on which the Judgment becomes Final.

5                   1.9       “Final” means the latest of: (i) the date of final affirmance on an appeal  
6       of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the  
7       Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of  
8       any form of valid appeal from the Judgment. Notwithstanding the foregoing, any proceeding or  
9       order, or any appeal or petition for a writ pertaining solely to the award of attorneys’ fees,  
10      litigation costs and/or enhancement awards to the Class Representatives shall not, by itself, in any  
11      way delay or preclude the Judgment from becoming Final.

12                  1.10      “Financial Advisor” or “Financial Advisors” or “FA” or “FAs” shall  
13      mean those Persons employed by the Merrill Lynch Releasees as Financial Advisors (who may  
14      have also been referred to as Financial Consultants or like terms and including without limitation  
15      those who perform the duties of a Financial Advisor simultaneously with a supervisory role), as  
16      that term is commonly used by Merrill Lynch. This term includes Financial Advisors in the  
17      Professional Development Program (“PDP”) or Paths of Achievement (“POA”) Program and  
18      Financial Advisor Trainees.

19                  1.11      “Judgment” means the judgment to be rendered by the Court pursuant to  
20      this Agreement, in the form attached hereto as Exhibit 5, or in a similar form without material  
21      changes thereto.

22                  1.12      “Last Known Address” or “Last Known Addresses” means the most  
23      recently recorded mailing address for a Class Member as such information is contained in  
24      employment or personnel records maintained by Merrill Lynch.

25                  1.13      The “Litigation” or the “Lawsuit” means the Consolidated Action and the  
26      Other Pending Actions described in Section I of the Agreement.

27                  1.14      “Maximum Settlement Amount” shall mean the maximum amount that  
28      Merrill Lynch can possibly pay under the terms of this Agreement (subject to the occurrence of

1 the Effective Date), which is \$43,500,000. The specific components of this Maximum Settlement  
2 Amount are: (a) payments including, without limitation, gross settlement payments and Payroll  
3 Taxes to Participating Claimants, which shall be in the gross maximum amount of \$32,030,000  
4 before withholding provided for in this Agreement (the "Net Settlement Consideration");  
5 (b) Class Counsel's total attorney fees, which shall be in the gross maximum amount of  
6 \$10,875,000; (c) Class Counsel and the Class Representative's actually incurred litigation costs  
7 (including the cost of the Special Master referenced in Section V, Paragraph 2.1.1) which shall  
8 be in the gross maximum amount of \$125,000; (d) claims administration costs, which are  
9 estimated to be approximately \$150,000 but may exceed that amount; and (e) an enhancement  
10 payment to the 16 Class Representatives, which shall be in the gross maximum amount of  
11 \$20,000 to each Class Representative (a maximum aggregate amount of \$320,000).

12 1.15 "Merrill Lynch" means Merrill Lynch, Pierce, Fenner & Smith  
13 Incorporated, a Delaware corporation and the defendant in the Litigation.

14 1.16 "Merrill Lynch Releasees" or "The Merrill Lynch Releasees" means  
15 Merrill Lynch, each of its affiliates (including without limitation parents and subsidiaries  
16 including, but not limited to, Merrill Lynch & Co., Inc.), predecessors, successors, divisions, joint  
17 ventures and assigns, and each of these entities' past or present directors, officers, employees,  
18 partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys,  
19 personal or legal representatives.

20 1.17 "Net Settlement Consideration" shall mean the amount that shall be paid  
21 by Merrill Lynch if all Class Members become Participating Claimants and submit Qualifying  
22 Settlement Claim Certification Forms, and this Net Settlement Consideration for payments to  
23 Participating Claimants shall be a maximum gross amount of \$32,030,000 unless the Court  
24 awards less than: (i) \$10,875,000 in attorneys fees; (ii) incurred litigation costs of \$125,000;  
25 (iii) \$320,000 in enhancement payments. In such case, the Net Settlement Consideration shall be  
26 increased by the same amount that the Court has reduced the proposed award of attorneys fees,  
27 litigation costs and/or enhanced payments. Similarly, if the claims administration costs exceed  
28 \$150,000, the Net Settlement Consideration will be reduced by the amount that the actually-

1 incurred claims administration costs exceed \$150,000. It is understood and agreed that if fewer  
2 than all of the Class Members become Participating Claimants, then Merrill Lynch will pay less  
3 than the Net Settlement Consideration and the unpaid amount shall remain the property of Merrill  
4 Lynch.

5 1.18 "Non-Settlement Class" consists of or means all Class Members who  
6 properly and timely elect to opt out of the Settlement Class by submitting Opt Outs pursuant to  
7 Paragraph 2.5.2 of this Section V of the Agreement.

8 1.19 "Non-Settlement Class Member" or "Member of the Non-Settlement  
9 Class" means a Person who is a member of the Non-Settlement Class.

10 1.20 "Notice Approval Date" means that date following the Preliminary  
11 Approval Order in which the Court issues its Order Re: Settlement Formula for Allocation and  
12 Approving Mailing of Class Notice and Setting Settlement Hearing, substantively in the form  
13 attached hereto as Exhibit 2.

14 1.21 "Notice Re: Pendency of Class Action" or "Notice To Class Members  
15 Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement" or "Class  
16 Notice" means a notice (and associated response forms) entitled "Notice To Class Members Re:  
17 Pendency of a Class Action and Notice of Hearing On Proposed Settlement" to be approved by  
18 the Court, substantially in the form attached hereto as Exhibit 3.

19 1.22 The "Notice Mailing Deadline" shall be the date sixty (60) days after the  
20 Notice Approval Date.

21 1.23 The "Notice Response Deadline" shall be the date ninety (90) days after  
22 the Class Notice is mailed to the Class Members by the Claims Administrator.

23 1.24 "Opt In" or "Opt Ins" shall mean any Class Member who returns a  
24 Qualifying Settlement Claim Certification Form to the Claims Administrator. Submission of  
25 Qualifying Settlement Claim Certification Form shall constitute binding and irrefutable evidence  
26 that the Class Member in question desired, intended and did opt in to a FLSA settlement.  
27  
28

1                   1.25     “Opt Out” or “Opt Outs” means written and signed requests by Class  
2 Members to be excluded from the Settlement Class, which are submitted on the forms, in the  
3 manner, and within the time set forth in the Notice Re: Pendency of Class Action.

4                   1.26     “Order of Final Approval” or “Order Granting Final Approval of  
5 Settlement” shall mean an order to be entered and filed by the Court entitled “Order Determining  
6 Good Faith and Granting Final Approval of Settlement,” substantially in the form attached hereto  
7 as Exhibit 4.

8                   1.27     “Participating Claimant” or “Participating Claimants” means each  
9 Member of the Settlement Class who properly and timely submits a Qualifying Settlement Claim  
10 Certification Form in response to the Notice Re: Pendency of Class Action. As set forth in  
11 Section V, Paragraph 1.24, Participating Claimants are also Opt Ins.

12                  1.28     “Payroll Taxes” shall mean the payroll taxes or other payments for which  
13 the employee is responsible and which are customarily withheld by Merrill Lynch when making  
14 wage payments.

15                  1.29     “Person” means a natural person.

16                  1.30     “Preliminary Approval Date” shall mean the date on which the Court  
17 enters the Preliminary Approval Order.

18                  1.31     “Preliminary Approval Order” or “Order Granting Preliminary Approval  
19 for the Settlement” shall mean an order to be executed and filed by the Court entitled “Order  
20 Granting Preliminary Approval of Settlement” substantially in the form attached hereto as  
21 Exhibit 1.

22                  1.32     A “Qualifying Settlement Claim Certification Form” shall mean a  
23 Settlement Claim Certification Form that is fully completed, properly executed and timely  
24 returned to the Claims Administrator.

25                  1.33     A “Qualifying Work Month” is any calendar month in which a Class  
26 Member was employed by Merrill Lynch in the United States (excluding California),  
27 Washington, D.C., and/or Puerto Rico as a Financial Advisor during the Class Period. The Class  
28 Member in question need not have worked during the entire calendar month period for it to

1 qualify as a Qualifying Work Month. The parties agree that the total number of Qualifying Work  
2 Months for all Class Members is approximately, assuming the Preliminary Approval Date occurs  
3 in June 2008, is \_\_\_\_\_.

4 1.34 A "Reasonable Address Verification Measure" shall mean the utilization  
5 of the National Change of Address Database maintained by the United States Postal Service to  
6 review the accuracy of and, if possible, update a mailing address.

7 1.35 "Released Claims" shall collectively mean any and all claims to the  
8 broadest extent permitted by law, including Unknown Claims as defined in Paragraph 1.45  
9 hereof, and all demands, rights, liabilities and causes of action of every nature and description  
10 whatsoever by a Class Member relating to his or her employment with, or work for, Merrill  
11 Lynch or any of its affiliates, predecessors or successors including without limitation statutory,  
12 constitutional, contractual or common law claims, whether known or unknown, whether or not  
13 concealed or hidden, against the Merrill Lynch Releasees, or any of them, for any type of relief,  
14 including without limitation claims for wages, damages, deductions, unpaid costs, penalties,  
15 liquidated damages, punitive damages, interest, attorney fees, litigation costs, restitution, or  
16 equitable relief, based on the following categories of allegations:

17 (1)(a) Any and all claims under federal and/or state or any other law alleging  
18 misclassification of Financial Advisors as exempt employees and/or violation of premium  
19 overtime requirements, meal and rest period requirements, or any and all other wage and hour  
20 requirements as to Financial Advisors, including without limitation:

21 (i) any and all claims alleging failure to pay overtime wages;  
22 (ii) any failure to provide meal and/or rest periods; and  
23 (iii) any payroll or wage record-keeping or itemization requirements,  
24 including without limitation any claims concerning time records, the timing of wage payments, or  
25 the manner of wage payments;

26 (b) Any and all associated claims on behalf of Financial Advisors for  
27 penalties, including without limitation liquidated and/or punitive damages; and  
28



1 (c) Any and all associated claims on behalf of Financial Advisors for interest,  
2 costs, attorney fees, equitable relief or other types of available recovery; and

3 (2)(a) Any and all claims alleging the improper deduction from wages and/or  
4 imposition of costs, losses or penalties for errors or mistakes on Financial Advisors, such as, but  
5 without limitation, all claims relating to alleged improper trading error deductions, contributions  
6 to settlements and/or the Merrill Lynch Error Policy;

7 (b) Any and all associated claims on behalf of Financial Advisors for penalties,  
8 including without limitation liquidated damages and/or punitive damages; and

9 (c) Any and all associated claims on behalf of Financial Advisors for interest,  
10 costs, attorney fees, equitable relief or other types of available recovery; and

11 (3)(a) Any and all claims for failure to reimburse or cover or pay for business  
12 costs incurred by Financial Advisors, and/or for deductions from or adjustments to a Financial  
13 Advisor's compensation associated with such business costs, including without limitation claims  
14 for reimbursement of costs spent on or imposed for any type of business expenses or support  
15 staff, such as, but without limitation, all claims relating to the Merrill Lynch Fully Supported and  
16 Supplemental Compensation Programs;

17 (b) Any and all associated claims on behalf of Financial Advisors for penalties,  
18 including without limitation liquidated and/or punitive damages; and

19 (c) Any and all associated claims on behalf of Financial Advisors for interest,  
20 costs, attorney fees, equitable relief or other types of available recovery.

21 Released Claims include claims meeting the above definition under any and all  
22 applicable statutes, including without limitation the federal Fair Labor Standards Act, the Portal  
23 to Portal Act, and the statutes identified in Appendix 1. Notwithstanding the foregoing, Released  
24 Claims does not include any claims arising under the FLSA as to Class Members who do not  
25 become Opt Ins to the settlement by submitting a Qualifying Settlement Claim Certification Form  
26 to the extent that opting in would be required to waive such FLSA claims. Nonetheless, Class  
27 Members who neither submit a timely Qualifying Settlement Claim Certification Form nor a  
28 timely Opt Out will forfeit, release, and waive all rights to bring or participate in a collective or

1 class action under the Fair Labor Standards Act against the Merrill Lynch Releasees for any such  
2 FLSA claim accruing before the Preliminary Approval Date though said individuals will retain  
3 the right to pursue an individual action under the FLSA. "Released Claims" do not include  
4 employment discrimination claims arising under the Equal Pay Act, Title VII of the Civil Rights  
5 Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act or  
6 state statutes prohibiting discrimination in employment. "Released Claims" also does not include  
7 any claim for retaliation against Merrill Lynch by a Financial Advisor for his or her participation  
8 in this settlement arising after the Preliminary Approval Date.

9 1.36 "Settlement Claim Certification Form" shall mean the form attached as  
10 Form C to the Notice Re: Pendency of Class Action, in the same or substantially the same manner  
11 as set forth in Exhibit 3.

12 1.37 "Settlement Class" means the collective group of all of the Class  
13 Members who do not opt out of the Settlement Class by submitting Opt Outs pursuant to  
14 Section V, Paragraph 2.5.2, and thus means the collective group of all of the Class Members who  
15 will become bound by the Judgment if the Effective Date occurs.

16 1.38 "Settlement Class Member" or "Member of the Settlement Class" means  
17 any Person who is a member of the Settlement Class.

18 1.39 "Settlement Formula" shall mean the formula by which the Net  
19 Settlement Consideration shall be allocated among the Class Members prior to the claims process  
20 and payments to those Class Members who become Participating Claimants, and this formula  
21 shall take into account the jurisdictions in which the Class Members were employed and the  
22 associated strength of their Released Claims. The Special Master referred to in Section V,  
23 Paragraph 2.1.1 shall review the Class Counsel's proposed Settlement Formula and report his or  
24 her independent and neutral findings and recommendations on the Settlement Formula to the  
25 Court for its review and preliminary approval of the Settlement Formula and the inclusion of the  
26 allocation in the Class Notice.

1                   1.40     “Settlement Hearing” or “Fairness and Good Faith Determination  
2     Hearing” means a hearing set by the Court to take place on or about the date which is fifty-five  
3     (55) days after the Notice Response Deadline for the purpose of:

4                             (i) determining the fairness, adequacy and reasonableness of the  
5     Agreement and associated settlement pursuant to class action procedures and requirements;

6                             (ii) determining the good faith of the Agreement and associated  
7     settlement; and

8                             (iii) entering Judgment.

9                   1.41     “Settlement Sum” means the total, gross amount due to an individual  
10    Participating Claimant, which shall be the product of the Qualifying Work Months worked by that  
11    Participating Claimant multiplied by the amount per qualifying work month allocated through the  
12    Settlement Formula to the jurisdiction(s) in which the FA worked during the Class Period. In any  
13    event, the aggregate Settlement Sums for all Class Members if 100% of the Class Members  
14    participated and timely submitted valid Qualifying Settlement Claim Certification Forms shall  
15    not exceed the Net Settlement Consideration which is currently \$32,030,000.

16                   1.42     The “Settlement Sum Average” shall be the number which, when  
17    multiplied by the total number of Qualifying Work Months actually worked by all Class  
18    Members, equals the Net Settlement Consideration. (The Net Settlement Consideration for  
19    payments to participating claimants is currently \$32,030,000). In other words, the Settlement  
20    Sum Average equals the Net Settlement Consideration divided by the total number of Qualifying  
21    Work Months worked by all Class Members. Assuming the Preliminary Approval Date is June  
22    2008, the Settlement Sum Average shall be approximately \_\_\_\_\_.

23                   1.43     “Settling Parties” means Merrill Lynch and the Class Representatives on  
24    behalf of themselves and all Members of the Settlement Class.

25                   1.44     “Agreement” means this Joint Stipulation of Settlement of Class Action  
26    and Release and all of its attachments and exhibits, which the Settling Parties understand and  
27    agree sets forth all material terms and conditions of the Settlement between them, and which is  
28    subject to Court approval. It is understood and agreed that Merrill Lynch’s obligations for

1 payment under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date  
2 and other conditions set forth in this Agreement.

3 1.45 "Unknown Claims" means any Released Claims which any Class  
4 Representative or any Settlement Class Member does not know or suspect to exist in his or her  
5 favor at the time of the entry of the Judgment, and which, if known by him or her might have  
6 affected his or her settlement with and release of the The Merrill Lynch Releasees, or might have  
7 affected his or her decision to opt out of the Class or to object to this settlement. With respect to  
8 any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date,  
9 the Class Representatives shall expressly and each of the Settlement Class Members shall be  
10 deemed to have, and by operation of the Judgment shall have, waived the provisions, rights and  
11 benefits of any statute or principle of common law similar to California Civil Code § 1542, which  
12 provides:

13 A general release does not extend to claims which the creditor does not  
14 know or suspect to exist in his or her favor at the time of executing the  
15 release, which if known by him or her must have materially affected his or  
her settlement with the debtor.

16 The Class Representatives and each Settlement Class Member may hereafter discover facts in  
17 addition to or different from those which he or she now knows or believes to be true with respect  
18 to the subject matter of the Released Claims, but Class Representatives and each Settlement Class  
19 Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment  
20 shall have, fully, finally, and forever settled and released any and all Released Claims, known or  
21 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or  
22 hidden, which then exist, or heretofore have existed upon any theory of law or equity now  
23 existing or coming into existence in the future, including, but not limited to, conduct which is  
24 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard  
25 to the subsequent discovery or existence of such different or additional facts. The Class  
26 Representatives acknowledge, and the Settlement Class Members shall be deemed by operation of  
27 the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a  
28 material term of the settlement of which this release is a part.

1                   1.46     “Updated Address” means a mailing address that was updated via a  
2 Reasonable Address Verification Measure or via an updated mailing address provided by the  
3 United States Postal Service or a Class Member.

4           2.     The Settlement.

5                   2.1     *Allocation of the Net Settlement Consideration and*  
6                             *Payment to Participating Claimants*

7                   2.1.1   Due to the differing relative strength of some of the Plaintiffs’ allegations  
8 depending on the specific laws in each jurisdiction (including, without limitation, differing  
9 statutes of limitations, wage and hours laws, the definitions of wages and permissibility of alleged  
10 deductions) in which Financial Advisors were employed, Class Counsel shall develop a proposed  
11 non-binding Settlement Formula for allocating the Net Settlement Consideration among the  
12 Financial Advisors in each jurisdiction covered by this Agreement. Merrill Lynch will cooperate  
13 with Class Counsel by providing relevant information regarding class membership, months  
14 worked and annual compensation for each such covered jurisdiction. Neither the provision of  
15 such information by Merrill Lynch nor the Settlement Formula shall in any way increase the Net  
16 Settlement Consideration. Class Counsel shall propose a retired federal court judge to act as a  
17 Special Master to review the proposed Settlement Formula. Selection of the Special Master will  
18 be subject to Merrill Lynch’s approval which will not be unreasonably withheld and to approval  
19 by the Court. Any and all fees and costs of the Special Master shall be treated as a litigation  
20 expense of Class Counsel and will be paid from the Maximum Settlement Amount as set forth in  
21 Section V, Paragraph 1.14 above.

22                   In making his or her independent and neutral recommendation to the Court, the  
23 Special Master, in addition to other factors he or she deems appropriate, shall consider the  
24 proposed Settlement Formula and whether and by how much the funds made available to Class  
25 Members in various jurisdictions should vary based upon differences in applicable law in such  
26 jurisdictions. In no event, however, shall the Special Master’s recommendations and/or the  
27 Settlement Formula increase or change the Net Settlement Consideration. As set forth in  
28

1 Section V, Paragraph 2.3.4, the Settlement formula will be subject to preliminary approval by the  
2 Court on the Notice Approval Date.

3 2.1.2 Merrill Lynch, itself or through the Claims Administrator, and according  
4 to the terms, conditions and procedures set forth in this Section V of this Agreement, shall pay  
5 each Participating Claimant his or her Settlement Sum. To the extent administratively  
6 convenient, these payments shall be paid via one check to each Participating Claimant. Merrill  
7 Lynch shall withhold the Payroll Taxes on the wage portion of the payment. The Settlement  
8 Sums shall be allocated for reporting reasons as set forth below:

9 (a) Fifty percent shall be deemed payment in settlement of claims for  
10 unpaid wages; and

11 (b) Fifty percent shall be deemed payment in settlement of claims for  
12 penalties, punitive damages, business costs and staffing and expense and error reimbursements,  
13 interest and all other non-wage recovery.

14 2.1.3 As further detailed in Paragraphs 2.2.1 and 2.2.2, and for each payment  
15 made pursuant to this Agreement including without limitation those made pursuant to Paragraphs  
16 2.1.2, 2.6.1, 2.6.2, 2.8.1, and 2.8.2 of this Section V, Merrill Lynch, itself or through the Claims  
17 Administrator, will report each payment to government authorities including the Internal Revenue  
18 Service as required by law, and it shall make all required deductions and/or withholdings.

19 2.2 *Taxes*

20 2.2.1 Those payments allocated to the settlement of claims for unpaid wages  
21 (a) shall be subject to required withholdings and deductions, and so the net amounts payable will  
22 be less than the gross amounts; and (b) shall be reported in the year of payment as wage income  
23 to the Participating Claimant on a Form W-2 or analogous form. Those payments allocated to all  
24 other claims, including without limitations claims for penalties, punitive damages, liquidated  
25 damages, reimbursement, interest and other non-wage recovery (a) shall not be subject to  
26 withholdings and deductions, and so the net amounts payable will be equal to the gross amounts;  
27 and (b) shall be reported in the year of payment as non-wage income to the Participating  
28 Claimants on a Form 1099 or a Form W-2 or analogous form as Merrill Lynch shall determine in

1 its sole discretion. Other than as set forth above, Merrill Lynch will not, unless otherwise  
2 required by law, make, from the Settlement Sum of each Participating Claimant, any deductions,  
3 withholdings or additional payments, including without limitation, medical or other insurance  
4 payments or premiums, employee 401(k) contributions or matching employer contributions, wage  
5 garnishments, or charity withholdings, and entry of the Order of Final Approval by the Court  
6 shall be deemed authority not to make such deductions, withholdings or additional payments.  
7 Any amount paid to Participating Claimants shall not create any credit or otherwise affect the  
8 calculation of any deferred compensation, benefit or other compensation plan provided by Merrill  
9 Lynch.

10 2.2.2 Other than the withholding and reporting requirements set forth in  
11 Section V, Paragraphs 2.1.2, 2.1.3 and 2.2.1, Participating Claimants shall be solely responsible  
12 for the reporting and payment of any federal, state and/or local income or other tax or any other  
13 withholdings, if any, on any of the payments made pursuant to this Section V of this Agreement.  
14 Merrill Lynch makes no representations and it is understood and agreed that Merrill Lynch has  
15 made no representations as to the taxability of any portions of the settlement payments to any  
16 Participating Claimants, the payment of any costs or an award of attorney fees, or any payments  
17 to the Class Representatives. The Notice Re: Pendency of Class Action will advise Class  
18 Members to seek their own tax advice prior to acting in response to that notice, and the Class  
19 Representatives and Class Counsel agree that Class Members will have an adequate opportunity  
20 to seek tax advice prior to acting in response to the notice.

21 2.3 *Court Approval of Notice to the Class and A Settlement Hearing.*

22 2.3.1 On or before May 1, 2008, the Class Representatives and Merrill Lynch,  
23 through their counsel of record in the Litigation, shall file this Agreement with the Court and  
24 jointly move for preliminary approval of this Agreement. Via this submission, and a supporting  
25 motion, the Settling Parties, through their counsel of record, will request that the Court (a) enter  
26 the Preliminary Approval Order, including a proposed draft of the Class Notice (with certain  
27 blanks regarding the Settlement Formula and/or the allocations of the Net Settlement  
28 Consideration); (b) approving the selection of the Special Master; (c) directing the Class



1 Representatives and Class Members not to proceed with further litigation in Other Pending  
2 Actions; and (d) entering an order prohibiting putative class members from filing any new actions  
3 asserting claims similar to those presented in the Litigation (except individual FLSA actions by  
4 those who do not release such an action by their actions taken in connection with the Agreement)  
5 and which would otherwise constitute Released Claims under this Agreement until the Court's  
6 decision on final approval of this Agreement. Via this same motion, the Class Representatives,  
7 through Class Counsel shall advise the Court of the agreements set forth in Paragraphs 2.8.1,  
8 2.8.2 and 2.8.3 of this Section V of this Agreement.

9           2.3.2 Subject to Court availability, the Class Representatives and Merrill Lynch  
10 shall endeavor to notice the joint motion for entry of the Preliminary Approval Order described in  
11 Paragraph 2.3.1 for a hearing before the Court on or before June 15. Failure of the Court to enter  
12 the Preliminary Approval Order in its entirety or in a similar form without material changes  
13 thereto will be grounds for Merrill Lynch or the Class to terminate the settlement and the terms of  
14 this Agreement. Changes to the amount of attorneys fees, litigation costs and/or enhancement  
15 payments shall not be deemed material changes allowing the parties to terminate the settlement  
16 and/or this Agreement.

17           2.3.3 Not later than ten (10) calendar days following the filing of this  
18 Stipulation and the motion for preliminary approval, the Claims Administrator, at Merrill Lynch's  
19 direction, shall notify the Attorney General and Department of Labor (or functional equivalent,  
20 regardless of title) in each of the states except California of the existence of this Settlement; the  
21 Claims Administrator shall also issue a supplemental notice not later than ten (10) calendar days  
22 following the Notice Approval Date and not later than ten (10) calendar days following the entry  
23 of Judgment. The Claims Administrator shall document all efforts under this Paragraph 2.3.3,  
24 and shall provide the Court, Class Counsel, and Merrill Lynch's counsel with a declaration  
25 certifying its compliance no later than five (5) business days after each such mailing is complete.  
26 Wherever necessary or appropriate, Class Counsel and Merrill Lynch will assist the Claims  
27 Administrator by providing information which is necessary for the preparation of the notice  
28 required by this Paragraph 2.3.3. Said notice shall include to the extent then available:

- 1                   1.       All current and former complaints in the Litigation and material
- 2 accompanying those complaints;
- 3                   2.       A schedule of upcoming judicial hearings, if any, in the Litigation;
- 4                   3.       The then- current Notice Re: Pendency of Class Action;
- 5                   4.       A true and correct copy of this Agreement;
- 6                   5.       Any other agreements between Class Counsel and attorneys for Merrill
- 7 Lynch;
- 8                   6.       An estimate of the number of members of the Settlement Class (and their
- 9 names, if feasible) who reside in the jurisdiction of the entity or agency receiving the notice;
- 10                  7.       The estimated proportionate share of the entire settlement being offered to
- 11 the individuals who reside in the jurisdiction of the entity or agency receiving the notice (after it
- 12 has been determined by the Settlement Formula); and
- 13                  8.       Any written judicial opinion or order of this Court relating to items
- 14 numbers 3 through 7.

15                   Notwithstanding the foregoing, Merrill Lynch understands and agrees that, as the

16 settling defendant, it is ultimately responsible for notifying the appropriate federal and state

17 officials pursuant to 28 U.S.C. § 1715.

18                   2.3.4 After the Court has entered its Preliminary Approval Order, the Special

19 Master will review the proposed Settlement Formula and will submit his or her written

20 recommendation on the Settlement Formula. The Settling Parties will file the Special Master's

21 written report within five (5) court days following their receipt of the report. Settling Parties will

22 have ten (10) calendar days following the filing of the report with the Court to file their motion(s)

23 to adopt or modify the Special Master's recommendation and schedule a hearing with the Court in

24 accordance with the local rules for its approval of the Settlement Formula. In that hearing, the

25 Settling Parties will also request the Court's approval of the final form of the Class Notice (with

26 the Settlement Formula and/or allocation information added) and its authorization to mail the

27 Class Notice to the Class. The date the Court enters its order on these motions shall be referred as

28 the Notice Approval Date. As part of that Order, the Court will also schedule the Settlement

1 Hearing for the purposes of determining good faith with regard to the settlement, granting final  
2 approval of the settlement, granting final approval of this Agreement and entering Judgment.

3           2.3.5 If the Court approves the Settlement Formula and the Class Notice, Class  
4 Counsel and counsel for Merrill Lynch shall meet and confer after the Notice Approval Date to  
5 reach agreement on any necessary revisions of the deadlines and timetables set forth in this  
6 Agreement. In the event that the Settling Parties fail to reach such agreement, any of the Settling  
7 Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in  
8 this Agreement, provided that such a request to the Court may seek only reasonable modifications  
9 of the dates and deadlines contained in this Agreement and no other changes.

10           2.3.6 If the Court enters the Preliminary Approval Order, and approves the  
11 Settlement Formula and the Class Notice, then at the resulting Settlement Hearing, the Class  
12 Representatives and Merrill Lynch, through their counsel of record, shall address any written  
13 objections from Class Members or any concerns from Class Members who attend the hearing as  
14 well as any concerns of the Court, if any, and shall and hereby do, unless provided otherwise in  
15 this Agreement, stipulate to final approval of this Agreement and entry of the Judgment by the  
16 Court.

17           2.4 *Notice to Class Members.*

18           2.4.1 If, by entering an order approving the Settlement Formula and the final  
19 form of the Class Notice, the Court provides authorization to send the Notice Re: Pendency of  
20 Class Action to Class Members, Merrill Lynch, through its counsel of record and/or the Claims  
21 Administrator, will facilitate the mailing to all Class Members at their Last Known Addresses of  
22 the Class Notice. This Class Notice shall be mailed via first class mail through the United States  
23 Postal Service, postage pre-paid.

24           2.4.2 This Class Notice and its envelope or covering shall be marked to denote  
25 the return address of the Claims Administrator.

26           2.4.3 Merrill Lynch shall prepare the name, Last Known Address, and number  
27 of Qualifying Work Months for each jurisdiction for each Class Member for the Claims  
28 Administrator so that the Claims Administrator can engage in the processing and mailing of each

1 Class Notice. This information will be provided to the Claims Administrator only. Four  
2 representatives of Class Counsel, James Clapp, Kenneth Lehn, Jeffrey Smith and Stephen Denittis  
3 may, upon reasonable notice to Merrill Lynch, review (but not copy or otherwise retain) the  
4 information provided by Merrill Lynch to the Claims Administrator at Merrill Lynch's office in  
5 New York, New York.

6 2.4.4 Prior to mailing the Class Notice to each Class member, the Claims  
7 Administrator shall undertake a Reasonable Address Verification Measure to ascertain the current  
8 accuracy of the Last Known Address of each Class Member. To the extent this process yields an  
9 Updated Address, that Updated Address shall replace the Last Known Address and be treated as  
10 the new Last Known Address for purposes of this Agreement and for subsequent mailings in  
11 particular.

12 2.4.5 Prior to mailing the Class Notice to each Class Member, and to the extent  
13 possible within the requisite deadlines, the Claims Administrator shall include in the space  
14 provided on each Class Notice the number of Qualifying Work Months in each jurisdiction for  
15 each Class Member.

16 2.4.6 Unless the parties agree otherwise in writing or the Court so orders, each  
17 of the Notices shall be mailed to the Last Known Addresses of the Class Members no later than  
18 the Notice Mailing Deadline.

19 2.4.7 Merrill Lynch shall be responsible for all costs of the mailing described in  
20 Paragraph 2.4.1, which shall be the fees charged by the Claims Administrator, the cost of the  
21 envelope in which the Class Notice will be mailed, the cost of reproducing the Class Notice, and  
22 the cost of postage to send the Class Notice. Those costs are included in the Claims  
23 Administration Costs set forth in Paragraph 1.14(d). No other materials beside the Class Notice  
24 will be included in this mailing and no other material will be sent to Class Members unless by the  
25 Claims Administrator or Class Counsel in response to a specific submission or inquiry from a  
26 Class Member responding to the Class Notice. The Class Representatives acknowledge that  
27 Merrill Lynch's agreement to pay the claims administration and mailing costs constitutes  
28 additional consideration to the Class.

1                   2.4.8 Unless the Claims Administrator receives a Class Notice returned from  
2 the United States Postal Service for reasons discussed below in this Paragraph, that Class Notice  
3 shall be deemed mailed and received by the Class Member to whom it was sent five (5) days after  
4 mailing. In the event that subsequent to the first mailing of a Notice Re: Pendency of Class  
5 Action and prior to the Notice Response Deadline, that Notice is returned to the Claims  
6 Administrator by the United States Postal Service with a forwarding address for the recipient, the  
7 Claims Administrator shall re-mail the notice to that address, the notice will be deemed mailed at  
8 that point, and the forwarding address shall be deemed the Updated Address for that Class  
9 Member. In the event that subsequent to the first mailing of a Class Notice, and at least seven (7)  
10 days prior to the Notice Response Deadline, that Notice is returned to the Claims Administrator  
11 by the United States Postal Service because the address of the recipient is no longer valid, the  
12 Claims Administrator shall perform a standard skip trace in an effort to attempt to ascertain the  
13 current address of the particular Class Member in question and, if such an address is ascertained,  
14 the Claims Administrator will promptly re-send the Notice; if no Updated Address is obtained for  
15 that Class Member, the Class Notice shall be sent again to the Last Known Address. In either  
16 event, the Notice Re: Pendency of Class Action shall be deemed received by the Class Member  
17 once it is mailed for the second time. Nothing in this Paragraph 2.4.8 shall be construed to extend  
18 the Notice Response Deadline for any Class Member.

19                   2.4.9 To the extent a Class Member has not submitted to the Claims  
20 Administrator some form of written response to the Class Notice by the date that is twenty (20)  
21 days before the Notice Response Deadline, the Claims Administrator shall send that Class  
22 Member a postcard (a) referencing the name of the Litigation; (b) stating that the Class Member  
23 received a notice in this action; (c) providing addresses for the Claims Administrator and Class  
24 Counsel; (d) stating the Notice Response Deadline, *i.e.*, the deadline to respond to the Class  
25 Notice if the recipient desires to do so; and (e) stating that the Class Member can contact the  
26 Claims Administrator to receive an additional copy of the notice. The postcard shall not contain  
27 additional information or statements. Nothing in this Paragraph 2.4.9 shall be construed to extend  
28 the Notice Response Deadline for any Class Member.

1                   2.5       *Responses to the Notice Re: Pendency of Class Action; Motion for Final*  
2       *Approval.*

3                   2.5.1     Class Members have the option to participate in this Lawsuit at their own  
4       expense by obtaining their own attorney(s). Class Members who choose this option will be  
5       responsible for any attorney fees or costs incurred as a result of this election. The Notice Re:  
6       Pendency of Class Action will advise Class Members of this option.

7                   2.5.2     Class Members may elect to “opt out” of the Settlement Class and thus  
8       exclude themselves from the Litigation and the Settlement Class. Class Members who wish to  
9       exercise this option must fully complete, execute and mail, per the instructions therein, the form  
10      entitled “Election to Opt Out of Settlement and Class Action” attached to the Notice Re:  
11      Pendency of Class Action as Form B. If a fully completed and properly executed Opt Out is not  
12      received by the Claims Administrator from a Class Member postmarked on or before the Notice  
13      Response Deadline, then that Class Member will be deemed to have forever waived his or her  
14      right to opt out of the Settlement Class. Class Members who do not properly submit Opt Outs  
15      shall be deemed Members of the Settlement Class. Class Members who properly and timely  
16      submit Opt Outs shall have no further role in the Litigation, and for all purposes they shall be  
17      regarded as if they never were a party to this Litigation, and thus they shall not be entitled to any  
18      benefit as a result of this Litigation, including without limitation any tolling of any pertinent  
19      statute of limitations.

20                  2.5.3     Class Members who do not opt out of the Class may also object to the  
21      Agreement by filing a written objection with the Court with copies to Class Counsel, Merrill  
22      Lynch’s Counsel and the Claims Administrator by no later than the Notice Response Deadline.  
23      The objection must set forth, in clear and concise terms, the legal and factual arguments  
24      supporting the objection. Unless otherwise ordered by the Court, Class Members shall not be  
25      permitted to speak at the final approval hearing unless they have submitted a timely written  
26      objection pursuant to this Paragraph. The Class Notice shall advise Class Members of this option.

27                  2.5.4     Class Members who do not opt out of the Settlement Class pursuant to  
28      Paragraph 2.5.2 may elect to become Participating Claimants. Class Members who wish to



1 exercise this option and certify their entitlement to payment under the settlement must fully  
2 complete, execute and mail, per the instructions therein, the form entitled "Settlement Claim  
3 Certification Form" attached to the Notice Re: Pendency of Class Action as Form C. Return of a  
4 Qualifying Settlement Claim Certification Form to the Claims Administrator will also constitute  
5 an opt in for the purpose of joining in the FLSA collective action and releasing any and all claims  
6 arising under the FLSA. Thus, any Class Member who returns a Qualifying Settlement Claim  
7 Certification Form will become an Opt In into the Litigation. If a completed and properly  
8 executed Settlement Claim Certification Form is not received by the Claims Administrator from a  
9 Class Member and postmarked on or before the Notice Response Deadline, then that Class  
10 Member will be deemed to have forever waived his or her right to be a Participating Claimant and  
11 receive payment under this settlement. As long as they do not properly submit Opt Outs, Class  
12 Members who do not submit Settlement Claim Certification Forms in a timely and proper fashion  
13 shall be deemed Members of the Settlement Class and shall be subject to the Judgment and shall  
14 be deemed to have released all Released Claims, provided Class Members who have not become  
15 Participating Claimants will not be deemed to have waived individual claims under the federal  
16 Fair Labor Standards Act. Only Participating Claimants shall be entitled to payment pursuant to  
17 the Judgment. It is agreed and understood that if all Class Members become Participating  
18 Claimants and submit valid and timely claims, then the maximum Merrill Lynch will pay is the  
19 Net Settlement Consideration which is currently a total gross amount of \$32,030,000 to all  
20 Participating Claimants, but if fewer than one hundred percent of Class Members become  
21 Participating Claimants, then Merrill Lynch will pay less to Participating Claimants.

22           2.5.5 Class Members who submit both Settlement Claim Certification Forms  
23 and Opt Outs shall be sent a cure letter by the Claims Administrator seeking clarification of  
24 which response they want to submit. Absent any cure, they will be deemed Participating  
25 Claimants.

26           2.5.6 Class Members who, for future reference and mailings from the Court or  
27 Claims Administrator, if any, wish to change the name or address listed on the envelope in which  
28 the Class Notice was first mailed to them, must fully complete, execute and mail, per the



1 instructions therein, the form entitled "Change of Name or Address Information" attached to the  
2 Notice Re: Pendency of Class Action as Exhibit A.

3           2.5.7 Opt out forms or claim forms must be post marked on or before the Notice  
4 Response Deadline to be valid and honored by the Claims Administrator. This term regarding  
5 late claim forms and late opt out forms was bargained for between the Settling Parties and is a  
6 material term of the Agreement. The Settling Parties agree that the Court shall not entertain or  
7 hear motions by Class Members, putative opt outs and/or Class Representatives relating to late  
8 claim forms and/or late opt out forms except where the Notice Response Deadline was missed  
9 due to the legal incapacity of a Class Member or putative opt out.

10           2.5.8 Any individual who submits a late or invalid Settlement Claim  
11 Certification Form that the parties mutually determine and agree to be a timely and/or valid claim  
12 will be an Opt In. Conversely, any individual's late Settlement Claim Certification Form that the  
13 parties do not mutually determine and agree to be a valid and/or timely claim will not be an Opt  
14 In. Nothing in this paragraph explicitly or implicitly creates any obligation by any party to  
15 consider, much less agree that a late Settlement Claim Certification Form is timely and/or valid.

16           2.5.9 Prior to the Settlement Hearing and consistent with the rules imposed by  
17 the Court, the Class Representatives and Merrill Lynch shall jointly move the Court for entry of  
18 the Order of Final Approval (and the associated entry of Judgment). Through this motion, the  
19 Settling Parties shall advise the Court of the agreements in Paragraphs 2.8.1, 2.8.2 and 2.8.3 of  
20 this Section V of this Agreement. The Class Representatives and Class Counsel shall be  
21 responsible for justifying the agreed upon payments set forth in Paragraphs 2.8.1 and 2.8.2 of this  
22 Section V of this Agreement. To the extent possible, the motion seeking entry of the Order of  
23 Final Approval shall be noticed for the same day as the Settlement Hearing. The Settling Parties  
24 shall take all reasonable efforts to secure entry of the Order of Final Approval. If the Court  
25 rejects the Agreement, fails to enter the Order of Final Approval, or fails to enter the Judgment,  
26 this Agreement shall be void *ab initio*, and Merrill Lynch shall have no obligations to make any  
27 payments under the Agreement.

1                   2.6       *Timing of Payment to Participating Claimants and Notice of Final*  
2       *Approval to Settlement Class Members.*

3                   2.6.1     Within thirty (30) days of and only after the Effective Date, Merrill  
4       Lynch, itself or through the Claims Administrator, shall pay to each Participating Claimant his or  
5       her respective Settlement Sum.

6                   2.6.2     In accordance with the terms of Paragraphs 2.1.2, 2.1.3 and 2.2.1, Merrill  
7       Lynch, itself or through the Claims Administrator, shall issue to each Participating Claimant one  
8       check (or more if necessary for administrative convenience) payable to the Participating  
9       Claimant, from Merrill Lynch (or from an account administered by the Claims Administrator but  
10      funded by Merrill Lynch), for the gross amount of the Settlement Sum, less relevant  
11      withholdings. Merrill Lynch, itself or through the Claims Administrator, shall mail this check(s)  
12      to each Participating Claimant at his or her Last Known Address, or Updated Address if obtained,  
13      on or before the date which is thirty (30) days after the Effective Date.

14                  2.6.3     Checks issued to Participating Claimants pursuant to this Agreement shall  
15      remain negotiable for a period of at least one hundred eighty (180) days from the date of mailing,  
16      and the funds associated with any checks which are not properly or timely negotiated shall remain  
17      the property of Merrill Lynch and shall not be paid to any Person other than Merrill Lynch. The  
18      Settling Parties hereby agree that such funds represent settlement payments for matters disputed  
19      in good faith, not uncontested wage payments, and they shall not be subject to escheat rules, *cy*  
20      *pres*, or other distribution not provided for in this Stipulation. Any order or orders that result in  
21      Merrill Lynch not being permitted to retain any unclaimed or unused settlement funds in an  
22      amount that exceeds \$50,000 in the aggregate will be grounds for Merrill Lynch, in its sole  
23      discretion, to void the settlement and not make any payments under this Agreement. Merrill  
24      Lynch, however, must declare the Agreement null and void within seven (7) days from the order  
25      (either alone or when combined with prior orders) that results in a total of more than \$50,000 of  
26      the unclaimed or unused Maximum Settlement Amount not being retained by Merrill Lynch.  
27      Participating Claimants who fail to negotiate their check(s) in a timely fashion shall, like all  
28

1 Participating Claimants and Settlement Class Members, remain subject to the terms of the  
2 Judgment.

3           2.6.4 Following the mailing of the Notices of Final Approval to the Settlement  
4 Class and the payments to Participating Claimants discussed in Paragraph 2.6.2, the Claims  
5 Administrator shall provide counsel with a written confirmation of this mailing. Upon receipt of  
6 this confirmation, Class Counsel will file a notice or acknowledgement of satisfaction of  
7 judgment with the Court in the Litigation on behalf of the Settlement Class.

8           2.7 *Releases.*

9           2.7.1 Upon the Effective Date, The Class Representatives and each of the  
10 Settlement Class Members (and only these Persons) shall be deemed to have, and by operation of  
11 the Judgment shall have, fully, finally, and forever released, dismissed with prejudice,  
12 relinquished and discharged all Released Claims.

13           2.8 *Payment of Costs, Attorney Fees, Litigation Costs and Enhancements to*  
14 *the Class Representatives.*

15           2.8.1 Class Counsel shall be entitled, subject to Court approval, to apply to the  
16 Court for an award of attorney fees and costs, not to exceed the amounts specified herein.  
17 Providing that the conditions set forth in this Agreement are satisfied, not more than ten (10) days  
18 after the Effective Date, and only if the Effective Date occurs, and again subject to Court  
19 approval, Merrill Lynch will pay Class Counsel up to \$10,875,000 for all attorney fees; and, not  
20 more than ten (10) days after the Effective Date, and only if the Effective Date occurs, and again  
21 subject to Court approval, Merrill Lynch will pay Class Counsel up to \$125,000 for all allowable  
22 Litigation costs and expenses. Payments made per this paragraph shall constitute full satisfaction  
23 of any claim for fees or costs, and the Class Representatives and Class Counsel, on behalf of  
24 themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to any  
25 additional attorney fees or costs under any theory. The Class Representatives and Class Counsel  
26 agree that they shall be responsible for justifying to the Court, the amount of these attorney fees  
27 and litigation cost payments and they agree to submit the necessary materials to justify these  
28 payments along with the Settling Parties' joint motion for final approval of the Agreement

1 pursuant to Paragraph 2.5.9. Merrill Lynch agrees not to oppose any submission regarding, or  
2 request for approval of, payment of attorney fees or litigation costs provided it is consistent with  
3 this Agreement. In the event that the Court (or appellate court) awards less than the maximum  
4 amount for attorney fees and/or litigation costs, only the awarded amounts shall be paid and shall  
5 constitute full satisfaction of the obligations of this paragraph and full payment thereunder, and  
6 any remaining or unawarded portion of the maximum attorney fees and litigation cost awards  
7 described in this Agreement shall be added to the Net Settlement Consideration. If the Effective  
8 Date occurs, Merrill Lynch pursuant to this Paragraph shall pay the law firm of Wolf Haldenstein  
9 Adler Freeman & Herz LLP any attorneys fees and litigation costs that have been approved by the  
10 Court provided that all Class Counsel have executed this Agreement and by doing so  
11 acknowledge that the payment and method of payment under this Agreement is in full satisfaction  
12 of any and all claims, rights and/or demands Class Counsel, Class Representatives and/or the  
13 Class had, have or may claim to have in the future for attorneys fees, costs, expenses, debts or any  
14 other payment in connection with the Litigation and/or this Agreement. A Form 1099 for this  
15 payment will be filed for Wolf Haldenstein Adler Freeman & Herz LLP. That firm agrees to  
16 provide Merrill Lynch with its tax identification number. Other than any reporting of this fee and  
17 cost payment as required by this Agreement or law, which Merrill Lynch shall make, Class  
18 Counsel and the Class Representatives shall alone be responsible for the reporting and payment of  
19 any federal, state and/or local income or other form of tax on any payment made pursuant to this  
20 Paragraph. Other than as provided in this Paragraph 2.8.1 for the limited purpose discussed  
21 herein, no party shall be deemed the prevailing party for any other purposes of the Litigation.

22           2.8.2    Class Counsel shall be entitled, subject to Court approval to apply to the  
23 Court for an award of an enhancement payment to each of the sixteen (16) Class Representatives  
24 of an amount not to exceed \$20,000 each (\$320,000 in the aggregate). Class Counsel may make  
25 this application along with any supporting material along with the Settling Parties' Joint Motion  
26 for Final Approval of the Agreement Pursuant to Paragraph 2.5.9. Merrill Lynch will not oppose  
27 Class Counsel's request for these enhancement payments provided it is consistent with this  
28 Agreement. If the Court awards any amounts less than \$20,000 to each Class Representative (or

1 \$320,000 in the aggregate), the unawarded remainder shall be added to the Net Settlement  
2 Consideration. Providing that the conditions set forth in this Agreement are satisfied, not more  
3 than ten (10) days after the Effective Date, and only in the event that the Effective Date occurs,  
4 Merrill Lynch will forward a check made payable to each of the Settling Named Plaintiffs in  
5 each's personal capacity only and via each's counsel of record, in the gross amount of twenty  
6 thousand United States dollars (or other such lower amounts the court approves) in addition to  
7 each's Settlement Sum as a Participating Claimant. Such payments shall be compensation and  
8 consideration for both (a) their efforts as the Class Representatives in the Litigation; and (b) each  
9 Class Representative's execution of a general release to the benefit of the Merrill Lynch  
10 Releasees. Through this Agreement, the Named Settling Plaintiffs agree to be Members of the  
11 Settlement Class, Participating Claimants and Opt Ins subject to the Judgment, and in light of this  
12 agreement and their implicit certification, it shall not be necessary for them to be sent a Notice  
13 Re: Pendency of Class Action or for them to complete a Settlement Claim Certification Form.  
14 The Settling Parties agree that Merrill Lynch shall report the enhancement payment as non-wage  
15 income in the year of payment, and that Merrill Lynch will report the payment of each Settling  
16 Named Plaintiff's Settlement Sum according to the terms of this Agreement. Other than the  
17 reporting and withholding set forth in this Agreement, each Settling Named Plaintiff shall be  
18 responsible for the reporting and payment of any federal, state and/or local income or other form  
19 of tax on any payment made pursuant to this Paragraph.

20           2.8.3 Unless otherwise expressly provided, Merrill Lynch shall have no  
21 responsibility for, and no liability whatsoever with respect to, the allocation among the Class  
22 Representatives, Class Counsel and/or any other Person who may assert some claim thereto, of  
23 any award or payment issued or made in the Litigation or pursuant to this Agreement, including,  
24 but not limited to, any award or payment pursuant to Paragraph 2.8.1 or 2.8.2.

25           2.8.4 If the Effective Date does not occur, neither the Class Representatives nor  
26 Class Counsel shall have any responsibility or obligation for the payment of costs incurred by the  
27 Claims Administrator, including the cost of mailing the Notice.  
28

1                   2.9       *Claims Administrator.*

2                   2.9.1   Merrill Lynch shall be solely responsible for the fees and expenses  
3 reasonably incurred by the Claims Administrator as a result of procedures and processes  
4 expressly required by this Agreement. The Class Representatives and Class Counsel shall have  
5 no responsibility for such fees or expenses. Based on current estimates, the Settling Parties  
6 anticipate that the total sum paid to the Claims Administrator will not exceed \$150,000, but the  
7 Settling Parties understand and agree that this figure represents just an estimated maximum, and  
8 the sum charged by the Claims Administrator may be different and the entire amount charged will  
9 be offset against the Maximum Settlement Amount.

10                  2.9.2   The actions of the Claims Administrator shall be governed by the terms of  
11 this Agreement. Merrill Lynch may provide relevant information needed by the Claims  
12 Administrator per this Agreement and engage in related communications with the Claims  
13 Administrator without notice or copies to Class Counsel, any Class Members or the Court. Class  
14 Counsel may provide relevant information needed by the Claims Administrator per this  
15 Agreement and engage in related communications with the Claims Administrator without notice  
16 or copies to Merrill Lynch, any Class Members or the Court. Merrill Lynch may make payment  
17 to the Claims Administrator for its services and engage in related communications with the  
18 Claims Administrator without notice or copies to Class Counsel, any Class Members or the Court.

19                  2.9.3   In the event that the Class Representatives or Class Counsel take the  
20 position that the Claims Administrator is not acting in accordance with the terms of the  
21 Agreement, Class Counsel shall meet and confer with counsel for Merrill Lynch prior to raising  
22 any such issue with the Claims Administrator or the Court.

23                  2.10    *Termination of Settlement*

24                  2.10.1   In the event that the settlement set forth in this Agreement shall not be  
25 approved without material changes by the Court or, if one of the conditions upon which the  
26 Agreement is based is not satisfied, or in the event that the Effective Date does not occur, no  
27 payments other than those pursuant to paragraph 2.9.1 shall be made by Merrill Lynch to anyone  
28 in accordance with the terms of this Agreement, the Settling Parties will bear their own costs and



1 fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null  
2 and void with no effect on the Litigation whatsoever. Court changes to the dates of hearings  
3 provided for in this Agreement by fewer than five (5) months and/or reductions in the amount of  
4 attorney fees, litigation costs and/or enhancement awards pursuant to Paragraphs 2.8.1 or 2.8.2,  
5 shall not be deemed a substantial change necessitating termination of the settlement. In the event  
6 that five percent (5%) or more of Class Members opt out of the Settlement Class by submitting  
7 Opt Outs pursuant to Paragraph 2.5.2, Merrill Lynch shall have the absolute discretionary right to  
8 terminate this settlement and Agreement. To the extent Merrill Lynch chooses to exercise the  
9 option established in this Paragraph, it must do so through written notice to Class Counsel within  
10 seven (7) days after being notified in writing by the Claims Administrator that the number of opt  
11 outs has exceeded the agreed upon limit.

12 *2.11 Miscellaneous Provisions.*

13 2.11.1 The only Class Members entitled to any payment under this Agreement  
14 and the associated Judgment are Participating Claimants, and they shall be entitled to their  
15 respective Settlement Sums only. This Agreement and the associated Judgment do not and will  
16 not create any unpaid residue or unpaid residual, and no distribution of such shall be required.  
17 The provisions of California Code of Civil Procedure section 384 and/or any similar statute in any  
18 other state do not apply to this action or this Agreement. Any portion of the Net Settlement  
19 Consideration that is not properly claimed shall remain the property of Merrill Lynch, and any  
20 finding(s) to the contrary exceeding \$50,000 in the aggregate will be a ground for Merrill Lynch  
21 to void the settlement as set forth in Paragraph 2.6.3.

22 2.11.2 No Person shall have any claim against Class Counsel, the Claims  
23 Administrator, counsel for Merrill Lynch or any of the Merrill Lynch Releasees based on the  
24 payments made or other actions taken substantially in accordance with the Agreement and the  
25 settlement contained therein or further orders of the Court.

26 2.11.3 In the event that the Agreement is not substantially approved by the Court  
27 or the settlement set forth in the Agreement is terminated, cancelled, declared void or fails to  
28 become effective in accordance with its terms, or if the Judgment does not become Final, or to the



1 extent termination, cancellation or voiding of the Agreement is otherwise provided in this  
2 Agreement, the Settling Parties shall resume the Litigation at that time as if no Agreement had  
3 been entered. In such event, the terms and provisions of the Agreement shall have no further  
4 force and effect with respect to the Settling Parties and shall not be used in this Litigation or in  
5 any other proceeding for any purpose, and any Judgment or order entered by the Court in  
6 accordance with the terms of the Agreement shall be treated as vacated, *nunc pro tunc*. In such  
7 event, all discussions and negotiations related to and/or culminating in this Agreement shall  
8 remain confidential and subject to Federal Rule of Evidence 408, any similar state statute in any  
9 other jurisdiction, the mediation privilege and the Settling Parties' confidentiality agreement  
10 signed at the mediation on November 18, 2006. Notwithstanding any other provision of this  
11 Agreement, no order of the Court reducing, or modification or reversal on appeal of any order of  
12 the Court reducing the amount of any attorney fees or litigation costs to be paid by Merrill Lynch  
13 to Class Counsel or the amount of the enhancement payments to the Class Representatives, shall  
14 constitute grounds for cancellation or termination of the Agreement or grounds for limiting any  
15 other provision of the Judgment.

16 2.11.4 The Settling Parties (a) acknowledge that it is their intent to consummate  
17 this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and  
18 implement all terms and conditions of the Agreement and to exercise their best efforts to  
19 accomplish the foregoing terms and conditions of the Agreement.

20 2.11.5 The Agreement compromises claims which are contested in good faith,  
21 and it shall not be deemed an admission by any of the Settling Parties as to the merits of any  
22 claim or defense. The Settling Parties agree that the amounts paid in Settlement and the other  
23 terms of the settlement were negotiated in good faith by the Settling Parties and reflect a  
24 settlement that was reached voluntarily after consultation with competent legal counsel.

25 2.11.6 Neither the Agreement nor the settlement, nor any act performed or  
26 document executed pursuant to, or in furtherance of, the Agreement or the settlement: (a) is or  
27 may be deemed to be or may be used as an admission of, or evidence of, the validity of any  
28 Released Claim, or of any wrongdoing or liability of the Merrill Lynch Releasees, or any of them;

1 or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or  
2 omission of the Merrill Lynch Releasees, or any of them, in any civil, criminal or administrative  
3 proceeding in any court, administrative agency or other tribunal. The Class Representatives and  
4 Class Counsel agree not to argue or present any argument, and hereby waive any argument, that  
5 Merrill Lynch could not contest (or is estopped from contesting) class certification and/or  
6 proceeding collectively on any grounds if this Litigation were to proceed; this Agreement shall  
7 not be deemed an admission by, or ground for estoppel against, Merrill Lynch that class  
8 certification and/or proceeding collectively in the Litigation is proper or cannot be contested on  
9 any grounds. Similarly, Merrill Lynch agrees to waive any argument based on delay or laches  
10 against Class Counsel in any subsequent proceeding.

11 2.11.7 All of the exhibits to the Agreement are material and integral parts hereof  
12 and are fully incorporated herein by this reference.

13 2.11.8 The Agreement may be amended or modified only by a written instrument  
14 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

15 2.11.9 The Agreement constitutes the entire agreement among the Settling  
16 Parties hereto and no representations, warranties or inducements have been made to any party  
17 concerning the Agreement or its exhibits other than the representations, warranties and covenants  
18 contained and memorialized in such documents. Except as otherwise provided herein, each party  
19 shall bear its own costs and attorney fees.

20 2.11.10 Class Counsel, on behalf of the Class, are expressly authorized by the  
21 Class Representatives to take all appropriate action required or permitted to be taken by the Class  
22 pursuant to the Agreement to effect its terms, and also are expressly authorized to enter into any  
23 modifications or amendments to the Agreement on behalf of the Class which they deem  
24 appropriate.

25 2.11.11 Each counsel or other Person executing the Agreement or any of its  
26 exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do  
27 so.

1                   2.11.12 The Agreement may be executed in one or more counterparts. All  
2                   executed counterparts and each of them shall be deemed to be one and the same instrument. A  
3                   complete set of original executed counterparts shall be filed with the Court.

4                   2.11.13 The Agreement shall be binding upon, and inures to the benefit of, the  
5                   heirs, executors, successors and assigns of the parties hereto; but this Agreement is not designed  
6                   to and does not create any third party beneficiaries.

7                   2.11.14 The Court shall retain jurisdiction with respect to implementation and  
8                   enforcement of the terms of the Agreement, and all parties hereto submit to the jurisdiction of the  
9                   Court for purposes of implementing and enforcing the settlement embodied in the Agreement.

10                  2.11.15 The Agreement and the exhibits hereto shall be considered to have been  
11                  negotiated, executed and delivered, and to have been wholly performed, in the State of New  
12                  York, and the rights and obligations of the parties to the Agreement shall be construed and  
13                  enforced in accordance with, and governed by, the internal, substantive laws of the State of New  
14                  York without giving effect to that State's choice of law principles.

15                  2.11.16 The language of all parts of this Agreement shall in all cases be construed  
16                  as a whole, according to its fair meaning, and not strictly for or against either party. No party  
17                  shall be deemed the drafter of this Agreement. The parties acknowledge that the terms of the  
18                  Agreement are contractual and are the product of negotiations between the parties and their  
19                  counsel. Each party and their counsel cooperated in the drafting and preparation of the  
20                  Agreement. In any construction to be made of the Agreement, the Agreement shall not be  
21                  construed against any party and the canon of contract interpretation to the contrary shall not be  
22                  applied.

23                  2.11.17 The Settling Parties agree to take all reasonable steps to comply with the  
24                  requirements of the Class Action Fairness Act of 2005, including the notice requirements. It is  
25                  the intent of the parties that the Judgment be binding on all Settlement Class Members.

26                  2.11.18. The Class Representatives and Class Counsel shall not cause any aspect  
27                  of this Litigation or the terms of this Stipulation to be reported to the media or news reporting  
28                  services.

2.11.19 Merrill Lynch agrees that it shall not retaliate in any way against Class Members for their participation in this Settlement.

DATED: \_\_\_\_\_, 2008

SWANSON THOMAS & COON

By:   
JAMES S. COON

Attorneys for Plaintiff JEFFREY POOLE

DATED: \_\_\_\_\_, 2008

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_  
TERRY E. SANCHEZ

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2.11.19 Merrill Lynch agrees that it shall not retaliate in any way against Class Members for their participation in this Settlement.

DATED: \_\_\_\_\_, 2008

SWANSON THOMAS & COON

By: \_\_\_\_\_  
JAMES S. COON

Attorneys for Plaintiff JEFFREY POOLE

DATED: \_\_\_\_\_, 2008

MUNGER, TOLLES & OLSON LLP

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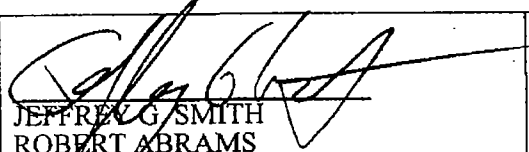


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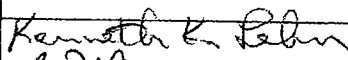

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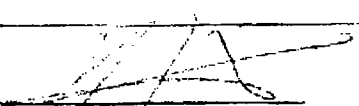
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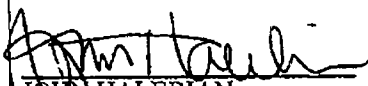
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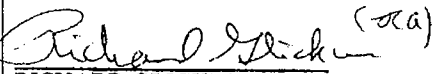
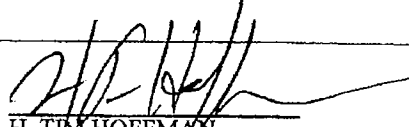
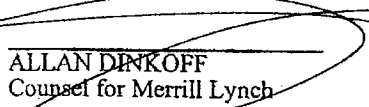
  
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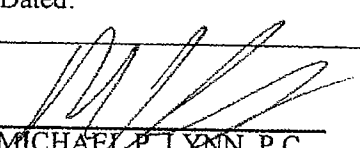
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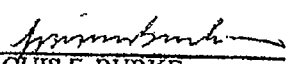
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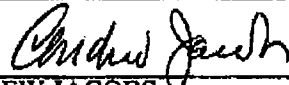
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Dated: 4/10/08

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David Bachrach

Dated: 3/28/2008

Edward France

Dated:

James C. Howell

Dated:

Andrea Loughlin

Dated:

Mary O'Reilly

Dated:

Jeffrey Poole

Dated:

Burkhard Spring

Dated:

Winsome P. Carter

Dated:

Peter Garrison

Dated:

Jeffrey Kemp

Dated:

Henry V. M. Multala

Dated:

Anthony Palumbo

Dated:

Edward Reinhart

Dated:

Richard J. Testa, Jr.


Dated:

1 Parties' signatures:

2		
3		
4	<u>David Bachrach</u>	<u>Winsome P. Carter</u>
5	Dated:	Dated: April 4, 2008
6		
7		
8	<u>Edward France</u>	<u>Peter Garrison</u>
9	Dated:	Dated:
10		
11		
12	<u>James C. Howell</u>	<u>Jeffrey Kemp</u>
13	Dated:	Dated:
14		
15	<u>Andrea Loughlin</u>	<u>Henry V. M. Multala</u>
16	Dated:	Dated:
17		
18		
19	<u>Mary O'Reilly</u>	<u>Anthony Pafumbo</u>
20	Dated:	Dated:
21		
22	<u>Jeffrey Poole</u>	<u>Edward Reinhart</u>
23	Dated:	Dated:
24		
25		
26	<u>Burkhard Spring</u>	<u>Richard J. Testa, Jr.</u>
27	Dated:	Dated:

28

1 Parties' signatures:

2		
3		
4		
5	David Bachrach	Winsome P. Carter
6	Dated:	Dated:
7		
8	 Edward France	Peter Garrison
9	Dated: 4-1-07	Dated:
10		
11		
12	James C. Howell	Jeffrey Kemp
13	Dated:	Dated:
14		
15	Andrea Loughlin	Henry V. M. Multala
16	Dated:	Dated:
17		
18		
19	Mary O'Reilly	Anthony Palumbo
20	Dated:	Dated:
21		
22	Jeffrey Poole	Edward Reinhart
23	Dated:	Dated:
24		
25		
26	Burkhard Spring	Richard J. Testa, Jr.
27	Dated:	Dated:

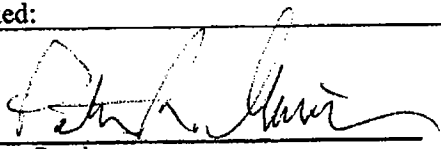
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- 44 -

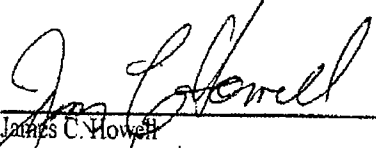
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STIPULATION RE: SETTLEMENT CASE (CASE NO: 3:06-cv-01657-HA)

Parties' signatures:

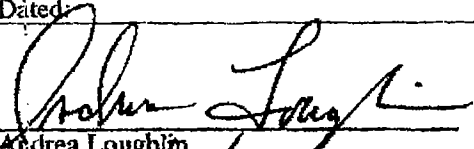
David Bachrach	Winsome P. Carter
Dated:	Dated:
Edward France	 Peter Garrison
Dated:	Dated: 04/07/2008
James C. Howell	Jeffrey Kemp
Dated:	Dated:
Andrea Loughlin	Henry V. M. Multala
Dated:	Dated:
Mary O'Reilly	Anthony Palumbo
Dated:	Dated:
Jeffrey Poole	Edward Reinhart
Dated:	Dated:
Burkhard Spring	Richard J. Testa, Jr.
Dated:	Dated:

Parties' signatures:

David Bachrach	Winsome P. Carter
Dated:	Dated:
Edward France	Peter Garrison
Dated:	Dated:
 James C. Howell Dated: 4-4-08	Jeffrey Kemp
Dated:	Dated:
Andrea Loughlin	Henry V. M. Multala
Dated:	Dated:
Mary O'Reilly	Anthony Palumbo
Dated:	Dated:
Jeffrey Poole	Edward Reinhart
Dated:	Dated:
Burkhard Spring	Richard J. Testa, Jr.
Dated:	Dated:



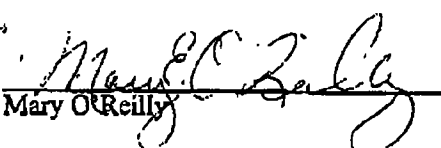
4	David Bachrach	Winsome P. Carter
5	Dated:	Dated:
6		
7		
8	Edward France	Peter Garrison
9	Dated:	Dated:
10		
11		
12	James C. Howell	Jeffrey Kemp
13	Dated:	Dated: 04-04-08
14		
15	Andrea Loughlin	Henry V. M. Multala
16	Dated:	Dated:
17		
18		
19	Mary O'Reilly	Anthony Palumbo
20	Dated:	Dated:

4	David Bachrach	Winsome P. Carter
5	Dated:	Dated:
6		
7		
8	Edward France	Peter Garrison
9	Dated:	Dated:
10		
11		
12	James C. Howell	Jeffrey Kemp
13	Dated:	Dated:
14		
15	Andrea Loughlin	Henry V. M. Multala
16	Dated: 4/4/08	Dated:
17		
18		
19	Mary O'Reilly	Anthony Palumbo
20	Dated:	Dated:

Parties' signatures:

David Bachrach	Winsome P. Carter
Dated:	Dated:
Edward France	Peter Garrison
Dated:	Dated:
James C. Howell	Jeffrey Kemp
Dated:	Dated:
Andrea Loughlin	Henry V. M. Mitala
Dated:	Dated: 4-3-08
Mary O'Reilly	Anthony Palumbo
Dated:	Dated:
Jeffrey Poole	Edward Reinhart
Dated:	Dated:
Burkhard Spring	Richard J. Testa, Jr.
Dated:	Dated:

Parties' signatures:

David Bachrach	Winsome P. Carter
Dated:	Dated:
Edward France	Peter Garrison
Dated:	Dated:
James C. Howell	Jeffrey Kemp
Dated:	Dated:
Andrea Loughlin	Henry V. M. Multala
Dated:	Dated:
 Mary O'Reilly	Anthony Palumbo
Dated:	Dated:
Jeffrey Poole	Edward Reinhart
Dated:	Dated:
Burkhard Spring	Richard J. Testa, Jr.
Dated:	Dated:

Parties' signatures:

David Bachrach

Dated:

Winsome P. Carter

Dated:

Edward France

Dated:

Peter Garrison

Dated:

James C. Howell

Dated:

Jeffrey Kemp

Dated:

Andrea Loughlin

Dated:

Henry V. M. Multala

Dated:

Mary O'Reilly

Dated:

Anthony Palumbo

Dated: 4-9-08

Jeffrey Poole

Dated:

Edward Reinhart

Dated:

Burkhard Spring

Dated:

Richard J. Testa, Jr.

Dated:

Parties' signatures:

David Bachrach

Dated:

Winsome P. Carter

Dated:

Edward France

Dated:

Peter Garrison

Dated:

James C. Howell

Dated:

Jeffrey Kemp

Dated:

Andrea Loughlin

Dated:

Henry V. M. Multala

Dated:

Mary O'Reilly

Dated:

Anthony Palumbo

Dated:

Jeffrey Poole

Dated:

Edward Reinhart

Dated:

Burkhard Spring

Dated:

Richard J. Testa, Jr.

Dated:

Parties' signatures:

David Bachrach

Dated:

Winsome P. Carter

Dated:

Edward France

Dated:

Peter Garrison

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James C. Howell

Dated:

Jeffrey Kemp

Dated:

Andrea Loughlin

Dated:

Henry V. M. Multala

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Mary O'Reilly

Dated:

Anthony Palumbo

Dated:

Jeffrey Poole

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Edward Reinhart

Dated:

4-10-08

Burkhard Spring

Dated:

Richard J. Testa, Jr.

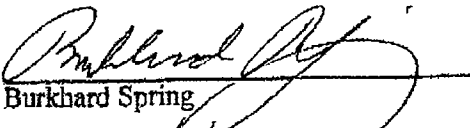
Dated:

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- 44 -

STIPULATION RE: SETTLEMENT CASE (CASE NO: 3:06-cv-01657-HA)

1 Parties' signatures:

2		
3		
4	David Bachrach	Winsome P. Carter
5	Dated:	Dated:
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7		
8	Edward France	Peter Garrison
9	Dated:	Dated:
10		
11	James C. Howell	Jeffrey Kemp
12	Dated:	Dated:
13		
14		
15	Andrea Loughlin	Henry V. M. Multala
16	Dated:	Dated:
17		
18		
19	Mary O'Reilly	Anthony Palumbo
20	Dated:	Dated:
21		
22	Jeffrey Poole	Edward Reinhart
23	Dated:	Dated:
24		
25		
26	Burkhard Spring	Richard J. Testa, Jr.
27	Dated: 4/2/08	Dated:

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- 44 -


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STIPULATION RE: SETTLEMENT CASE (CASE NO: 3:06-cv-01657-HA)



Parties' signatures:

David Bachrach	Winsome P. Carter
Dated:	Dated:
Edward France	Peter Garrison
Dated:	Dated:
James C. Howell	Jeffrey Kemp
Dated:	Dated:
Andrea Loughlin	Henry V. M. Multala
Dated:	Dated:
Mary O'Reilly	Anthony Palumbo
Dated:	Dated:
Jeffrey Poole	Edward Reinhart
Dated:	Dated:
Burkhard Spring	Richard J. Testa, Jr.
Dated:	Dated: 4/9/08

 Robert Traitz Dated: April 4, 2008	 Michael Wendling Dated:
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Robert Traitz

Dated:

Michael Wendling  
Michael Wendling  
Dated: April 7, 2008